

DUNCAN MILLER

IBLA 75-198

Decided March 5, 1975

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W-37173 for failure to pay sufficient advance rental.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Rentals

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 43 CFR 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than ten percent. The amendment of the regulations to eliminate the requirement that the advance rental must be submitted with simultaneous filings, effective September 17, 1973, was of prospective effect only, and may not be invoked to cure a defect in rental payment in a simultaneously filed lease offer pending on September 17, 1973.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Duncan Miller appeals from an October 3, 1974, decision of the Wyoming State Office, Bureau of Land Management, 1/ rejecting his

1/ The offer was originally rejected on the basis that Miller refused to sign a standard stipulation agreement for protection of the environment. Miller's arguments were rejected on appeal by decision of this Board dated July 22, 1974. Miller subsequently filed the signed stipulation giving rise to the issue of deficient rental payment.

simultaneous oil and gas lease offer W-37173 filed September 19, 1972, on the basis that Miller had paid advance rental of only \$80.00 for 520 acres, an amount substantially " * * * [o]ver 10% short on rental and not within the meaning of regulation 43 CFR 3111.1-1(e)(1)."

Miller appealed the State Office decision on the basis that the regulation that caused the rejection was no longer effective.

At the time Miller submitted his offer, 43 CFR 3111.1-1 in pertinent part stated:

* * * * *

(d) Rejection. Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met.

(1) An offer deficient in the first year's rental by no more than 10 percent.

[1] Miller's rental submitted was not within 10% of that required. A noncompetitive oil and gas lease offer in a monthly simultaneous filing procedure before September 1973 is properly rejected under 43 CFR 3103.2 and 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than ten percent. Ralph J. Scott, 15 IBLA 334 (1974).

The regulations governing the filing of simultaneous offers, 43 CFR Subpart 3112, were amended in several respects, effective September 17, 1973, by Circular No. 2348, which was published in the Federal Register of August 17, 1973 (38 F.R. 22230). One of the amendments, section 3112.4-1, eliminated the requirement that advance rental must be submitted with simultaneous lease offers. This amendment was of prospective effect only, and may not be invoked to cure a defect in the rental payment which accompanied a lease offer pending on September 17, 1973.

The BLM State Office correctly rejected the subject lease offer for the reason that the advance rental payment accompanying

it was deficient by more than 10 percent. Ralph F. Scott, supra; Mountain Fuel Supply Company, 13 IBLA 85 (1973); Robert D. Huston, 12 IBLA 336 (1973); Joe L. Frazier, 11 IBLA 317 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

